Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 73-329)

Bonds, list of approved riders

An additional rider approved for the Automated Bond Information System and identification thereof

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 30, 1973.

T.D.s. 73-198 and 73-284 contained a list of riders approved for use in connection with the Automated Bond Information System. A new rider, set forth below in the form to be used with its alphabetical designation, is hereby approved for use in the Automated Bond Information System.

(BON-2)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register December 7, 1973 (38 FR 33782)]

N—Deposit of merchandise in a bonded warehouse prior to the filing of a warehouse entry therefor—to be added to Customs Form 7553

In lieu of condition 2 appearing in the bond dated _____, in the amount of _____, executed by _____, as principal, and _____, as surety, to which this stipulation relates, it is hereby expressly agreed by the principal and surety thereon that the following condition shall apply:

(2) If, in cases where the merchandise has been released prior to entry pursuant to section 448(b) of the tariff act, the above-bounden principal within the time prescribed in section 142.11, Customs Regulations, as amended, after the release of the articles described in the application for a special permit, shall make entry for such articles and deposit the duties and taxes imposed upon or by reason of importation estimated to be due thereon, or in case the merchandise is to be entered for warehouse, file the usual warehouse entry bond; or if, in the event of failure to make entry or to deposit such duties and taxes, or file the usual warehouse entry bond, he shall pay to the district director of Customs as liquidated damages an amount equal to the value of the merchandise plus the duties and taxes thereon (it being understood and agreed that the amount to be collected shall be based upon the quantity and value of such merchandise as determined by the district director of Customs, and that the decision of the district director of Customs as to the status of such merchandise, whether free or dutiable, together with the rate and amount of duties and taxes, also shall be binding on all parties to this obligation);

Witness our hands and seals this ____ day of _____ 19__.

_____ (Seal)
Principal

_____ (Seal)
Surety

(T.D. 73-330)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and textile products in certain categories manufactured or produced in Mexico

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 4, 1973.

There is published below the directive of November 15, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and textile products in certain categories manufactured or produced in Mexico. This directive amends but does not cancel that Committee's directive of April 25, 1973 (T.D. 73-127).

This directive was published in the Federal Register on November 26, 1973 (38 FR 32527), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 15, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on April 25, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products produced or manufactured in Mexico.

Paragraph 4 of the directive of April 25, 1973 is amended, effective as soon as possible, to read as follows:

"Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics) the following specific levels of restraint shall apply:

Category	*Amended Twelve-Month Levels of Restraint*[1]
9/10	14,519,406 square yards
22/23	15,519,406 square yards
26/27 and part of 64 (knit fabrics)	15,880,313 square yards (but not more than 7,441,875 square yards in Categories 26 and 27 shall be in duck,[2] and not more than 689,063 square yards equivalent shall be in knit fabrics, T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040)"

Paragraph 5 of the directive of April 25, 1973 is amended to read as follows:

"Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics), each category without a specific level of restraint, pursuant to paragraph 7 of the bilateral agreement, is subject to a consultation level of 670,049 square yards, with the exception of Categories 8, 15, and 24 to which respective consultation levels of 1,500,000 square yards will apply. If appropriate, further directions concerning these categories will be made to you by letter."

Paragraph 8 of the directive of April 25, 1973 is also amended herewith to read as follows:

"Within the overall level of restaint for Categories 28 through 63 and 64 (excluding knit fabrics) each category without a specific level of restraint is subject to a consultation level of 469,033 square yards equivalent with the exception of Categories 30/31, 39, 45, 46, 47, 49, 50, 51, and 63 to which the levels listed below will apply. If appropriate, further directions concerning these categories will be made to you by letter.

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[1] These amended levels of restraint have not been adjusted to reflect any entries made on or after May 1, 1973.

[2] Only T.S.U.S.A. Nos.:

320.—01 through 04, 06, 08	326.—01 through 04, 06, 08
321.—01 through 04, 06, 08	327.—01 through 04, 06, 08
322.—01 through 04, 06, 08	328.—01 through 04, 06, 08

Category	*Revised Consultation Levels*
30/31	2,586,206 numbers
39	269,351 dozen pairs
45	36,059 dozen
46	32,710 dozen
47	36,059 dozen
49	30,000 dozen
50	53,380 dozen
51	53,380 dozen
63	173,913 pounds"

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 73-331)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in category 46 manufactured or produced in Portugal

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 4, 1973.

There is published below the directive of November 19, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textile products in category 46 manufactured or produced in Portugal. This directive amends but does not cancel that Committee's directive of December 29, 1972 (T.D. 73-33).

This directive was published in the Federal Register on November 23, 1973 (38 FR 32316), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 19, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On December 29, 1972, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1973 of cotton textiles and cotton textile products in certain specified categories produced or manufactured in Portugal in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraphs 5 and 10 of the Bilateral Cotton Textile Agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of December 29, 1972 for cotton textile products in Category 46 to 61,639 dozens.[2]

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal which provide, in part, that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] This level has not been adjusted to reflect any entries made on or after January 1, 1973.

of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and
Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 73-332)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 3, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 73-294 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
November 26, 1973	$0.0513
November 27, 1973	.0516
November 28, 1973	.0516
November 29, 1973	.0514
November 30, 1973	.0519
Belgium franc:	
November 26, 1973	$0.025245
November 27, 1973	.025265
November 28, 1973	.025300
November 29, 1973	.025210
November 30, 1973	.025285

Denmark krone:

November 26, 1973	$0.1640
November 27, 1973	.1648
November 28, 1973	.1630
November 29, 1973	.1629
November 30, 1973	.1630

France franc:

November 26, 1973	$0.2207
November 27, 1973	.2223
November 28, 1973	.2214
November 29, 1973	.2221
November 30, 1973	.2226

Germany deutsche mark:

November 26, 1973	$0.3781
November 27, 1973	.3828
November 28, 1973	.3804
November 29, 1973	.3805
November 30, 1973	.3812

Italy lira:

November 26, 1973	$0.001654
November 27, 1973	.001656
November 28, 1973	.001653
November 29, 1973	.001652
November 30, 1973	.001653

Japan yen:

November 26, 1973	$0.003570
November 27, 1973	.003570
November 28, 1973	.003574
November 29, 1973	.003570
November 30, 1973	.003570

Malaysia dollar:

November 26, 1973	$0.4100

Netherlands guilder:

November 26, 1973	$0.3623
November 27, 1973	.3638
November 28, 1973	.3627
November 29, 1973	.3623
November 30, 1973	.3623

Portugal escudo:	
November 26, 1973	$0.0401
November 27, 1973	.0402
November 28, 1973	.0404
November 29, 1973	.0400
November 30, 1973	.0401
Sweden krona:	
November 26, 1973	$0.2250
November 28, 1973	.2259
Switzerland franc:	
November 26, 1973	$0.3119
November 27, 1973	.3129
November 28, 1973	.3128
November 29, 1973	.3115
November 30, 1973	.3120

(LIQ-3-0:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

[Published in the Federal Register December 10, 1973 (38 FR 33998)]

(T.D. 73-333)

Antidumping—Polychloroprene rubber from Japan

The Secretary of the Treasury makes public a finding of dumping with respect to polychloroprene rubber from Japan. Section 153.43, Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 3, 1973.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153—ANTIDUMPING

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to this authority the Secretary of the Treasury has determined that polymerized chlorobutadiene, commonly known as polychloroprene rubber, from Japan is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921,

as amended (19 U.S.C. 160(a)). (Published in the Federal Register of August 2, 1973 (38 F.R. 20630).)

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the United States Tariff Commission responsibility for determination of injury or likelihood of injury. The United States Tariff Commission has determined, and on October 31, 1973, it notified the Secretary of the Treasury that an industry in the United States is being or is likely to be injured by reason of the importation of polychloroprene rubber from Japan sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. (Published in the Federal Register of November 6, 1973 (38 F.R. 30583).)

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to polychloroprene rubber from Japan.

Section 153.43 of the Customs Regulations is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	*Country*	*T. D.*
Polychloroprene rubber	Japan	73–333

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)
(APP-2-04)

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[Published in the Federal Register December 6, 1973 (38 FR 33593)]

(T.D. 73-334)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in category 51 manufactured or produced in Costa Rica

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 4, 1973.

There is published below the directive of November 27, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textile products in category 51 manufactured or produced in Costa Rica.

This directive was published in the Federal Register on November 30, 1973 (38 FR 33115), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 27, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to non-participants, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective November 28, 1973 and for the twelve-month period extending through November 27, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 51, produced or manufactured in Costa Rica, in excess of a level of restraint for the period of 18,634 dozen.

In carrying out this directive, entries of cotton textile products in Category 51, produced or manufactured in Costa Rica, which have been exported to the United States from Costa Rica prior to November 28, 1973, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period November 28, 1972 through November 27, 1973. In the event that the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

A detailed description of Category 51 in terms of TSUSA numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802), as amended on February 14, 1973 (38 F.R. 4436).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Costa Rica and with respect to imports of cotton textiles and cotton textile products from Costa Rica have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

(T.D. 73–335)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 3, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

	Official	*Free*
Hong Kong dollar:		
November 5, 1973	$0.1975	Unavailable
November 6, 1973	Holiday	"
November 7, 1973	.1970	"
November 8, 1973	.1970	"
November 9, 1973	.1960	"
Iran rial:		
November 19, 1973		$0.0145
November 20, 1973		.0148
November 21, 1973		.0148
November 22, 1973		Holiday
November 23, 1973		.0145
Philippine peso:		
November 19, 1973		$0.1480
November 20, 1973		.1490
November 21, 1973		.1490
November 22, 1973		Holiday
November 23, 1973		.1480
Singapore dollar:		
November 19, 1973		$0.4090
November 20, 1973		.4100
November 21, 1973		.4105
November 22, 1973		Holiday
November 23, 1973		.4105
Thailand baht (tical):		
November 19, 1973		$0.0475
November 20, 1973		.0435
November 21, 1973		.0435
November 22, 1973		Holiday
November 23, 1973		.0488

(LIQ-3-O:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4483)

KNOWLES ELECTRONICS
J. E. BERNARD & CO., INC. } *v.* UNITED STATES

Microphones—Inductors—
Parts of hearing aids

Under TSUS General Interpretative Rule 10(ij) a provision for "parts" of an article, while it covers a product solely or chiefly used

526-326—73——3

as a part of such article, does not prevail over a specific provision for such part.

Transducers, solely or chiefly used as the microphone part of a hearing aid, but which are specifically provided for as microphones under TSUS item 684.70, are dutiable under that provision rather than under TSUS item 709.50 as parts for hearing aids, as claimed.

Miniature electrical coils, not having been shown to be without the property of inductance relevant to their use with input and output transducer parts for hearing aids, are not, under General Interpretative Rule 10(ij), dutiable as parts for hearing aids under TSUS item 709.50. The evidence fails to overcome the presumption of correctness attaching to the classification of the coils as "inductors" specifically provided for under TSUS item 682.60.

Contrary to plaintiffs' contention, the tariff provision that includes "inductors" imposes no limitation on the amount of energy involved in the application of inductors.

Plaintiffs' claim under TSUS item 709.50 sustained as to transducer receivers conceded by defendant to be properly dutiable as parts of hearing aids under TSUS item 709.50.

Court Nos. 69/1961 and 70/45630

Port of Chicago

[Judgment in part for plaintiffs.]

(Decided November 19, 1973)

Schwartz & Lidstrom and *Barnes, Richardson & Colburn* (*Joseph Schwartz* of counsel) for the plaintiffs.

Irving Jaffe, Acting Assistant Attorney General (*Martin Rothstein* and *Andrew P. Vance*, trial attorneys), for the defendant.

LANDIS, Judge: These two cases, consolidated for trial without objection, involve merchandise imported from England and entered at Chicago in November 1966 (protest 69/1961) and November 1969 (protest 70/45630).

The imported merchandise is of three classes, viz: microphones, receivers, and coils which plaintiffs in their complaints (depending on the date of importation) claim are properly classifiable at 12 per centum and 9.5 per centum ad valorem as parts of hearing aids, dutiable under TSUS item 709.50, or alternatively (by amendment, without objection) at 11.5 per centum and 9 per centum ad valorem as electrical articles or electrical parts of articles, not specially provided for, under TSUS item 688.40.

The microphones and receivers (protest 69/1961) had been classified by customs at 15 per centum ad valorem under TSUS item 684.70

which provides for microphones, loudspeakers, headphones, and parts thereof.

The coils (protest 70/45630) were classified by customs as electrical goods (inductors), dutiable at 12 per centum ad valorem under TSUS item 682.60.

Defendant in its answer to the complaint has conceded that the receivers (BB–2511) are properly dutiable as parts of hearing aids under item 709.50, are claimed by plaintiffs and the protest of plaintiffs as to the receivers is therefore sustained.

This leaves before us for consideration two classes of the imported merchandise, viz: microphones and coils which, as above stated, plaintiffs claims are properly dutiable as parts of hearing aids under item 709.50 or alternatively as electrical articles or parts of articles, not specially provided for, under item 688.40, rather than as microphones under item 684.70 and electrical goods (inductors) under item 682.60 as classified by customs.

The pertinent provisions of TSUS relative to the respective classifications made by customs and claimed by plaintiffs and the duty assessments are as follows:

Classified:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 5. – ELECTRICAL MACHINERY AND EQUIPMENT

Part 5 headnotes:

1. This part does not cover—

* * * * * * *

(vi) electrical instruments and apparatus provided for in schedule 7.[1]

	Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof:	
	* * * * * * *	
682.60	Other	12% ad val.
	* * * * * * *	

[1] As amended by the Tariff Schedules Technical Amendments Act of 1965, P.L. 89–241 § 36 (f), 79 Stat. 933, 940 (1965), which deleted the words "and other electrical articles" from headnote 1(vi) as not to "preclude classification in such part 5 [schedule 6] of certain electrical 'parts' which would otherwise clearly fall within the specific provisions thereof. Headnote 1(vi) of part 5 is not intended to create an exception to general headnote 10(ij). * * * in order to avoid possible conflict between such headnote provisions, it is proposed to delete the words 'and other electrical articles' from headnote 1(vi)." H. Rep. No. 1728, 88th Cong., 2d Sess., at 24.

684.70	Microphones; loudspeakers; headphones; audio-frequency electric amplifiers; electric sound amplifier sets comprised of the foregoing components; and parts of the foregoing articles (including microphone stands)----------	15% ad val.

Claimed:

SCHEDULE 7. – SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

PART 2. – OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA

* * * * * * *

SUBPART B. – MEDICAL AND SURGICAL INSTRUMENTS AND APPARATUS; X-RAY APPARATUS

* * * * * * *

709.50	Hearing aids and parts thereof----------	12% ad val. [1966 rate] 9.5% ad val. [1969 rate]

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 5. – ELECTRICAL MACHINERY AND EQUIPMENT

* * * * * * *

688.40	Electrical articles, and electrical parts of articles, not specially provided for-----	11.5% ad val. [1966 rate] 9% ad val. [1969 rate]

Both sides concede that the BA–2502 so-called microphones of protest 69/1961 are chiefly used as parts of hearing aids. Because microphones and coils are substantially different kinds of articles, the classification of each is best weighed and considered separately.

Microphones

As noted earlier, both sides have conceded that the imported BA–2502 microphones are chiefly used as parts of hearing aids. TSUS General Interpretative Rule 10(ij) provides as follows:

> a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Under rule 10(ij), the imported microphones are, therefore, provided for by item 709.50 as parts of hearing aids. The issue left open for discussion and decision is whether under rule 10(ij), the TSUS item 684.70 provision for microphones is a specific provision so as to include what the record establishes is the microphone part of a hearing aid. Plaintiffs' position on that issue, notwithstanding the entry invoice describes the BA–2502 articles as microphones, boils down to the proposition that the articles here are not microphones in the tariff sense of the term and, in any case, are not microphones of the kind Congress contemplated in item 684.70.

Upon the record and arguments here made, I conclude that item 684.70 is *inter alia*, a specific provision for "parts" which the record here establishes are microphones, and that plaintiffs have failed to overcome the presumptively correct classification as microphones under item 684.70.

From defendant's characterization of plaintiffs' statement of the record,[2] as "complete and fairly presented", I take it that there is no major dispute as to the facts appearing of record. It is sufficient for purposes of discussion here, therefore, to set forth the complete and fairly presented facts, included by plaintiffs in their digest of the record. Those facts are as follows:

Exhibit 1, representative of the imported microphones, is referred to by plaintiffs in their invoices and sales and technical literature as "microphones" or as "miniature magnetic microphones". Such articles are also referred to as transducers, which is a broader term than is the term "microphones". The term "transducers" would also aptly include the BB–2511 receivers imported with the microphones. A microphone is technically (and narrowly) defined as a device for converting acoustical energy into electrical energy. The BA–2502 (exhibit 1) functions as a microphone. In contrast, a receiver such as the imported item BB–2511 functions as a receiver to convert electrical energy to acoustical energy. Normally transducers for hearing aids are specifically designed either for use as microphones (input transducers) or for use as receivers (output transducers). An input transducer technically fits the definition of a microphone.

The imported article, exhibit 1, is a microphone designed as an input transducer for a hearing aid. The similarities between the imported microphones and the imported receivers are greater than the dissimilarities and, as is the case with various types and sizes of micro-

[2] The record consists of the testimony of five witnesses for plaintiffs, two witnesses for defendant, and 34 exhibits (17 for plaintiffs and 17 for defendant).

phones, subject to loss in efficiency, they are reversible, that is, the microphone is capable of converting electrical energy to acoustical energy and the receiver is capable of converting acoustical energy to electrical energy. Magnetic microphones, such as exhibit 1, are more efficient when reversed than are other types of microphones, and more frequently used in reverse applications than are other types of microphones that include moving coil or ribbon microphones, capacitance or electrostatic microphones, and piezoelectric microphones.[3]

One of the plaintiffs' witnesses testified that to describe exhibit 1 as a microphone is inaccurate because if a person were to ask for a microphone in a commercial establishment that sold microphones he would not be offered an item of the kind represented by exhibit 1. Testimony of the same witness, to the effect that exhibit 1 was not a microphone because it lacked a "case", "a blast filter", "suspension" and "some means of terminating it" was rebutted by testimony of defendant's witness that exhibit 1 does have terminations and that a blast filter and a suspension and a case are not essential to a microphone.

To the extent that exhibit 1 can be used to perform functions other than converting acoustical energy into electrical energy, and has been used as an output transducer (receiver), it was the opinion of a witness for plaintiffs that exhibit 1 technically fits the definition of "transducer" but not that of "microphone". However, another witness for plaintiffs testified that function as a hearing aid microphone is far and away the most predominant application of exhibit 1. According to the witness 75 to 80 percent of the imported transducers were used as hearing aid microphones.

Defendant introduced testimony that Dyna Magnetic Devices, Inc., Hicksville, New York, the largest domestic manufacturer of input transducers of the kind represented by exhibit 1, describes its input transducers as microphones.

As part of its transducer line of products Dyna Magnetic Devices, Inc. also markets a miniature transducer for a helmet which picks up minute vibrations from the head and converts the mechanical energy or vibrations into electrical energy. The latter device is variously referred to as a "vibration pickup", a "vibration transducer", a "microphone", an "inertial microphone", or an "accelerometer". The helmet device does not, however, fit the technical definition of a microphone.

Plaintiffs contend that the imported microphones possess a "broader range of capabilities" than a microphone; that additional components must be added to the device to constitute it a microphone; that microphones are commercially sold as a self-contained unit; that the termi-

[3] *Electrical Engineers' Handbook*, Pender-McIlwain, Communications-Electronics, 4th ed. (New York: John Wiley & Sons, Inc.), at 13–22.

nology in the industry of microphones is confusing and imprecise, and that exhibit 1 itself is a potent witness to the fact that it is not a complete microphone.[4]

However, neither the facts heretofore alluded to nor plaintiffs' argument are, in my opinion, sufficient to support plaintiffs' contention that the articles they had invoiced as microphones are transducers rather than microphones.

In *Midland International Corporation* v. *United States*, 59 Cust. Ct. 523, 525, C.D. 3217 (1967), the court cited the following definition of ther term "transducer":

> transducer, *n.* [L. *transducers* to lead across.] *Physics.* A device actuated by power from one system and supplying power in the same or any other form to a second system. For example, a telephone receiver is a transducer, actuated by electric power and supplying acoustic power to the surrounding air.

Devices that convert acoustical energy into electrical energy and electrical energy into acoustical energy are, as defined above, generically transducers. Most transducers are basically reversible.[5]

Microphones and loudspeakers, both *eo nomine* provided for in item 684.70, are generically transducers and both may be of a kind with reverse capabilities, i.e., convert acoustical energy into electrical energy or electrical energy into acoustical energy. See, *Edo Commercial Corp. et al* v. *United States*, 65 Cust. Ct. 30, 34, C.D. 4049 (1970). The rationale of the *Edo* case, which involved a classification and claim the reverse of that in this case, strikes me as very much in point on the classification of the "microphones" under item 684.70 in this case.

The merchandise in *Edo* consisted of articles known as transducers. Customs classified the transducers as parts of ships' depth-sounding instruments and apparatus (plaintiffs' claim here is as parts of hearing aids). *Edo* claimed that the transducers were specifically provided for as microphones under item 684.70 and should, per force, General Interpretative Rule 10(ij), be classified as microphones. (The *Edo* claim is the essence of defendant's classification in this case.) The *Edo* transducer operated through piezoelectric activity and was reversible which, as explained in the opinion decision, meant that not only could it convert electrical energy into sound energy but it also could perform the reverse function of reconverting sound energy into electrical energy. Concluding "that a microphone in its common meaning is an instrument or device which converts sound waves into electrical signals for further transmission", the Customs Court discussed and overruled

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[4] Exhibit 1 is a tiny square metal encased device measuring approximately 5/16" by 5/16".

[5] *Edo Commercial Corp. et al.* v. *United States*, 65 Cust. Ct. 30, 33 (footnote 5), C.D. 4049 (1970).

the *Edo* claim that the depth-sounding device was a microphone in the following context:

> Coming now to the present case, the primary function of the transducer is not to convert sound to electricity or to convert electricity to sound. Rather, it has two coequal functions: the conversion of electricity to sound and the reconversion of sound to electricity so that it is more than a microphone and, for that matter more than a loudspeaker. And where an article "has two functions which are coequal, the article cannot be classed as one or the other." *Gallagher & Ascher Company* v. *United States*, 63 Cust. Ct. 223, 226–7, C.D. 3899 (1969). See also *V. Alexander & Company, Inc.* v. *United States*, 59 Cust. Ct. 510, C.D. 3212, 276 F. Supp. 573 (1967); *Castelazo & Associates et al.* v. *United States*, 61 Cust. Ct. 391, C.D. 3639, 294 F. Supp. 81 (1968).
>
> Beyond this, there are several other reasons way the claim lacks merit. As we have seen, it is plaintiffs' position that piezoelectric instruments which are capable of converting electricity into sound and vice versa constitute microphones. Were that position to be accepted, it would necessarily follow that since all piezoelectric instruments have reversible capabilities, they would have to be classified as microphones. But such a result would be clearly inconsistent with the Explanatory Notes to heading 85.14 of the *Brussels Nomenclature* which—as previously discussed—make a clear distinction—based on function—as between piezoelectric microphones and piezoelectric loudspeakers. Acceptance of plaintiffs' position would, in addition, make a nullity of the *Brussels Nomenclature's* Explanatory Note provision for piezoelectric loudspeakers since, under plaintiffs' reasoning, such loudspeakers would be classifiable as microphones. Moreover, considering that the transducer converts electric energy into sound energy and vice versa, it would be just as logical, under plaintiffs' rationale, to classify the transducer as a piezoelectric loudspeaker as it would be to classify it as a piezoelectric microphone. [65 Cust. Ct. at 34–35.]

The rationale of the *Edo* case persuasively explains that transducers, chiefly used as a part of an article, are classifiable according to the *primary function* they are designed to perform in the article of which they are a part. "Where the *primary function* of the * * * [transducer] is to convert sound to electricity, it constitutes a * * * *microphone*." (Emphasis quoted.) The transducer in the *Edo* case, since it performed the co-equal functions of converting electricity to sound and sound to electricity, was held to be more than a microphone and, therefore, properly dutiable as a part of a ship's depth-sounding apparatus, as classified by customs. The record here, which establishes that the primary function of the imported input transducers [microphones], chiefly used in hearing aids, is to convert acoustical energy into electrical energy, supports the presumption of correctness attaching to the customs classification under item 684.70 as microphones.

The speciousness of plaintiffs' contention dealt with above comes through plainly upon a consideration of plaintiffs' additional contention that "since the article [imported microphones] may be said to be described in two or more provisions of the schedules [item 684.70 as microphones, and item 709.50 as parts of hearing aids], it is [pursuant to TSUS General Interpretative Rule 10(c)] [6] classifiable under the provision which more specifically describes it." The cases cited by plaintiffs did not involve or suggest that the term "microphones" in item 684.70 is a less specific provision for the microphone part of a hearing aid.[7] It cannot be denied that in enacting item 684.70 Congress intended to establish, *inter alia*, a dutiable provision for microphones. In the light of the narrowly understood common meaning of the term "microphone", *Edo Commercial Corp. et al.* v. *United States*, *supra*, the congressional use of the term is, in my opinion, sufficiently specific to include the "microphone" part of a hearing aid. Cf. *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 187, 191, C.D. 3895, 305 F. Supp. 921 (1969).

The amendment of the part 5, schedule 6 headnote quoted, *supra*, the stated purpose of which was not "to preclude classification in such part 5 of certain electrical 'parts' which would otherwise clearly fall within the specific provisions thereof", supports my conclusion that the term "microphones" is a specific provision for the microphone part of an article.[8] Plaintiffs' reliance on interpretative rule 10(c)

[6] Rule 10(c) provides as follows:

(c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:

(i) a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby;

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading.

[7] *Vilem B. Haan et al.* v. *United States*, 67 Cust. Ct. 104, C.D. 4260, 332 F. Supp. 182 (1971) (the term "cushion" does not include the seat headrest part of an auto); *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F.2d 1308 (1970) (the term "saddles" does not include the bicycle seat part of a bicycle); *Midland International Corporation* v. *United States*, 62 Cust. Ct. 164, C.D. 3715, 295 F. Supp. 1101 (1969) (the term "plugs" intended to cover those for use in electrical power circuits does not include articles for low current or audio circuits); *United States* v. *Ampex Corp. et al.*, 59 CCPA 134, C.A.D. 1054 (1972) (tariff provision for "insulated electrical conductors" is more specific than tariff provision for "television apparatus"); *Arthur J. Humphreys et al.* v. *United States*, 56 CCPA 67, C.A.D. 956, 407 F.2d 417 (1969) (the term "furniture" is not a specific provision for the furniture part of a radio-phonograph combination); *Wilfred Schade & Co., Inc., etc.* v. *United States*, 62 Cust. Ct. 138, C.D. 3701, 295 F. Supp. 1117 (1969) (the term "molds" is a specific provision for molds that are parts of casting machines).

[8] Plaintiffs' attempt, in a footnote at page 37 of their brief, to draw significance from the fact that an extraneous headnote, to wit, schedule 7, part 2, subpart F has an exclusionary clause whereas schedule 7, part 2, subpart B does not, is entirely without merit. No point has been made as to the absence of an exclusionary clause in schedule 7, part 2, subpart B. The schedule 6, part 5 headnote, as discussed herein, on the other hand,

(the rule of relative specificity) does not call for a different result. The essence of the rule is that where two tariff provisions provide for an article, the more specific provision is the one having requirements which are more difficult to satisfy. *United States, etc.* v. *Simon Saw & Steel Company*, 51 CCPA 33, 40, C.A.D. 834 (1964). "While a 'parts' provision is not exactly a 'basket' provision, there is an analogy in that it necessarily includes a number of unnamed parts", *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, 106, C.A.D. 986 (1970). TSUS item 709.50 classifying hearing aids and parts thereof necessarily includes, in a basket fashion, unnamed parts that perform diverse functions in various kinds of hearing aids. The term "microphone" limited as it is to devices that, whatever their form, convert acoustical energy to electrical energy, is more difficult to satisfy. Compare, *United States* v. *Ampex Corp. et al.*, 59 CCPA 134, C.A.D. 1054 (1972). The statement in *Arthur J. Humphreys et al.* v. *United States*, 56 CCPA 67, 71, C.A.D. 956, 407 F.2d 417 (1969), one of the cases relied on by plaintiffs, that the tariff provision for "parts of radio-phonograph combinations" involved requirements more difficult to satisfy than the tariff provision for "furniture" does not presage a different approach. The statement must first be read in the context that it was directed to appellants' argument and not purely to the question of relative specificity. It is best understood in the context of what the court of appeals opinion decision next went on to state, namely, that:

> * * * So far as general headnote 10(ij) is concerned, we do not think that item 727.35 [furniture] constitutes a "specific provision" for the [furniture] parts of a radio-phonograph combination * * *.

Plaintiff cites no direct legislative history and I can find none, which supports its stated view that the imported microphones are not the class or kind Congress intended to classify in TSUS item 684.70. Where there is nothing to indicate what Congress intended a tariff term to mean, then the term must be read and understood in accord with the common meaning, *Brown Boveri Corp. et al.* v. *United States*, 53 CCPA 19, 23, C.A.D. 870 (1966). The record does not factually support, and it is not as apparent, as plaintiffs make out, that hearing aids are nothing more or less than electric sound amplifier sets classified under item 684.70. If they are, the fact that hearing aids would be classified as hearing aids under item 709.50, rather than as electric sound amplifier sets under item 684.70, does not demonstrate the fallacy of classifying the microphone part of

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indicates a clear legislative intent that parts of electrical articles provided for in schedule 7, pursuant to General Interpretative Rule 10(ij), remain classified in schedule 6 if specifically provided for in schedule 6.

a hearing aid as a microphone under item 684.70, as directed by Congress in interpretative rule 10(ij).

Defendant's admission that the BB–2511 receivers are parts of hearing aids is not inconsistent with defendant's classification of the BA–2502 device as a microphone. It does no good to argue that receivers are loudspeakers and next ask why defendant did not classify the receivers as loudspeakers. There is not an iota of proof that the BB–2511 receivers are loudspeakers, and argument is not a substitute for proof. As previously stated, for the reasons stated herein plaintiffs' claim that the invoice BA–2502 devices are properly classifiable as parts of hearing aids under item 709.50 is overruled.

Coils

The coils subject of protest 70/45630, designated on the invoice part of the official papers as BJ–50, BC–55, and BC–54 coils, were entered for the account of Knowles Electronics under TSUS item 682.60 which, *inter alia*, provides for inductors that are electrical goods. Plaintiffs' complaint, as previously stated, alleges that the coils are parts of hearing aids and should be so classified under item 709.50. Defendant denies that the coils are classifiable as parts of hearing aids and avers that the coils are inductors dutiable as classified and entered under item 682.60. TSUS item 682.60, as noted earlier, provides as follows:

	Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof:
* * * * * * *	
682.60	Other ----------[9]

Exhibit 2 is representative of the BJ–50 coil. Exhibits 3 and 4 are representative of the BC–55 and BC–54 coils. The three exhibits are tiny miniature size coils of undisclosed dimension. No one has deigned to question and the testimonial record attests that the coils are electrical goods imported for use with miniature magnetic transducers (i.e., microphones and receivers) that are concededly parts of hearing aids. Notwithstanding the imported electrical goods are imported as and sold as "coils", the issue raised by the complaint is whether the

[9] Compare, Brussels Nomenclature heading 85.01, *Explanatory Notes to the Brussels Nomenclature* (1955), Vol. III, at 925.

85.01—Electrical Goods of the Following Descriptions: Generators, Motors, Converters (Rotary or Static), Transformers, Rectifiers and Rectifying Apparatus, Inductors

coils are in fact inductors. There is no proof that the tariff term "inductors" is a commercial designation of any sort. The factual issue must, therefore, be weighed and determined according to the common meaning of the term "inductors". *Brown Boveri Corp. et al.* v. *United States*, 53 CCPA 19, 23, C.A.D. 870 (1966).

The witnesses for both sides, who gave their opinions as to the common meaning of the term "inductors", substantially agree that by definition an inductor is "a device for introducing inductance into a [electric] circuit" and that the "term covers devices with a wide range of uses, sizes, and types, including components for electric-wave filters, tuned circuits, electrical measuring circuits, and energy storage devices." [10] It is also agreed that inductance is commonly understood to mean that "property of an electric circuit or of two neighboring circuits whereby an electromotive force is induced (by the process of electromagnetic induction) in one of the circuits by a change of current in either of them." [11]

Plaintiffs conclude that the preponderance [12] of the evidence in this record establishes that "the coils are not inductors of any kind; and assuredly not the inductors contemplated by Congress in item 682.60." Defendant, in opposition, starts with the accepted assumption that the customs classification as inductors is presumptively correct. *Hayes-*

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[10] **Inductor**

A device for introducing inductance into a circuit. The term covers devices with a wide range of uses, sizes, and types, including components for electric-wave filters, tuned circuits, electrical measuring circuits, and energy storage devices.

Inductors are classified as fixed, adjustable, and variable. All are made either with or without magnetic cores. Inductors without magnetic cores are called air-core coils although the actual core material may be a ceramic, a plastic, or some other nonmagnetic material. Inductors with magnetic cores are called iron-core coils. A wide variety of magnetic materials is used and some of these contain very little iron. Magnetic cores for inductors for low-frequency, or high-energy storage, use are most commonly made from laminations of silicon steel. Some iron-core inductors with cores of compressed powdered iron, powdered permalloy, or ferrite are more suitable for higher-frequency applications. [*McGraw-Hill Encyclopedia of Science and Technology*, Vol. 7, at 80 (1966).]

The term "inductor", as used in Brussels Nomenclature heading 85.01, quoted in footnote 9, carries the same meaning, explained as follows:

(VI) INDUCTORS (E.G., REACTORS AND CHOKES)

These consist essentially of a single coil of wire which, inserted in an A.C. circuit, limits or prevents by its self-induction the flow of the A.C. They vary from small chokes used in wireless circuits, instruments, etc., to large coils often mounted in concrete, used in power circuits (e.g., for limiting the flow of current in the event of a short circuit). [*Explanatory Notes to the Brussels Nomenclature* (1955), Vol. III, at 928.]

[11] *McGraw-Hill Encyclopedia of Science and Technology*, Vol. 7, at 65 (1966).

[12] PREPONDERANCE. This word means more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But * * * [the court] cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side, not necessarily *in quantity*, but in effect. * * * [Emphasis added in part. *Black's Law Dictionary*, 3d ed. (1933), at 1404.]

Sammons Chemical Co. v. *United States*, 55 CCPA 69, 72, C.A.D. 935 (1968). Off that, it is defendant's position that plaintiffs' evidence is insufficient to overcome the presumption that the imported coils belong to a class or kind of electrical goods chiefly used for introducing inductance into the electrical circuit; that the coils must, therefore, be considered inductors within the common meaning of the term connoting use; and that tariff designations by use, as a matter of law, mean chief use.[13] Defendant, however, has cited no authority which holds that a description in TSUS connoting use is a classification by chief use. I have no reason to doubt that "[o]f all things most likely to help in the determination of the identity * * * [of the imported coils], beyond the appearance factors of size, shape, construction and the like, use [as the common meaning of the term "inductors" implies] is of paramount importance." The real problem in this case, however, when considering all those elements, is simply whether the imported coils are in fact "inductors". *United States* v. *Quon Quon Company*, 46 CCPA 70, 73, C.A.D. 699 (1959).

It is true plaintiffs' witnesses testified that the imported coils were not known or sold as inductors. They further stated that in designing the imported coils for miniature input and output transducers, the principal consideration was the physical characteristics of the coils, namely, size, shape, and number of turns, to meet a particular performance function in the transducer. In the opinion of plaintiffs' witnesses, inductance is the secondary and unavoidable by-product of the other physical characteristics for which the coils are designed. The coils do, of course, possess physical characteristics of size and shape necessary for their use in miniature tranducers. Concern for the physical characteristics of the imported coils, which exists in the manufacture of most precision tooled products designed to perform a particular function, does not, however, in my opinion, carry much weight with respect to the proper classification of the imported coils. I discount that as a consideration in the light of the common meaning of the term "inductors". Nothing in the common meaning of the term refers to the physical characteristics of inductors, which are devices having the property in an electric circuit to induce an electromotive force in the circuit.

In short, the evidence does preponderantly establish that the imported coils are manufactured to exacting design specifications; that the imported coils are not made to any specific level of inductance; that the inductance of the coil is secondary to the design considerations, and that the imported coils are dealt with in the trade [14] as "coils" rather than as "inductors". The sum of that evidence, however, is not

[13] TSUS, General Interpretative Rule 10(e)(i).

[14] No issue of "commercial designation" has been raised by plaintiffs or argued.

sufficiently relevant to overcome the presumption that the coils, in the manner of their use and application in miniature magnetic transducers, are inductors within the common meaning of the term. To the contrary, as I suggested earlier, the evidence of how the coils function in transducers tends to support the classification of these imported coils as inductors.

Plaintiffs' witnesses testified to the use and function of the imported coils in miniature magnetic transducers [15] and flatly opined that the imported coils were not inductors. But their opinions, as mentioned earlier, were preponderantly based on facts too inconclusive to establish that the coils were not inductors in the common meaning of the tariff term. The lack of concern for the property of inductance in the coils, constantly adverted to in the testimony, in my opinion, is quite immaterial since the inductance native in the coils is not established to be insufficient for application in miniature magnetic transducers. Plaintiffs' witnesses also testified that the function of the coils involved a process of induction which they said was not inductance. Such testimony, in my opinion, does no more than suggest a possible distinction which, for all that is said, may be a distinction without a difference.

One of plaintiffs' witnesses testified that the induction process he described was different from inductance as defined by McGraw-Hill,[16] for the reason that there was no current creating the magnetic field. Weighing the testimony of plaintiffs' witnesses on cross-examination, however, it is apparent that while they were inclined to equivocate, they were unable to deny that the imported coils have the property of inductance and that the manner in which the imported coils function in miniature magnetic transducers is a process of induction.[17]

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[15] On direct examination the witnesses substantively testified as follows:

> * * * the coil is a portion of the transducer which is basically involved in converting a magnetic change in the transducer to an electrical change, in one form or another; or, conversely, converting an input electrical change into a magnetic change in the transducer. * * * [R. 21.]
>
> * * * * * * * *
>
> * * * the coil is connected to an amplifier in a hearing aid; the amplifier delivers electrical energy to the coil; the coil transforms this, or transduces this into magnetic energy, which is then used to perform a mechanical function in the receiver, which moves a diaphragm, which produces acoustic energy. [R. 23.]
>
> * * * * * * * *
>
> The purpose of devices of these coils is to transfer electrical energy into magnetic energy in necessary transducers, and then the magnetic energy is converted into mechanical energy which is, in turn, converted into acoustical energy or vice-versa. [R. 80.]

[16] See, *op. cit.* n. 11.

[17] On cross-examination plaintiffs' witnesses testified as follows:

> Q. Isn't it a fact that those coils lend inductance to the circuit in the application in Knowles transducers as that term is defined in the McGraw-Hill publication which

Thus, notwithstanding plaintiffs' witnesses were of the opinion that the coils were not inductors, their explanation of the function of the

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I just cited to you?—A. I don't think I understand what you mean by "lend inductance to a device."

It is possible to measure the property of inductance on either the coil or the transducer, with electrical instrumentation, so the devices have a property which can be called "inductance," which can be measured as inductance.

Q. You say the coil in the transducer does have a property of inductance?—A. Yes, it does.

Q. Is that your testimony?—A. Yes.

Q. Would the transducer be able to function as a transducer if that coil did not have a property of inductance —A. I can't answer that directly, because the property of inductance is, comes along as a secondary characteristic in the transducer. It is not something that we either design for or, in fact, even measure in, in any of our applications.

Q. I asked you whether the feature of inductance, which you say the coil has, is necessary to the operation of the transducer, and whether the transducer could operate without the inductance of the coil. I think that calls for a "yes" or "no" answer, and you can explain your answer if you so desire. I did not ask you whether it was designed for that purpose.—A. Because of the physical nature of the device, inductance is a part of functioning of the transducer.

Q. Then it is necessary to the functioning of the transducer, is it not?—A. It is necessary in the sense that it is a by-product of something else for which we design, and that is a number of turns in a physical configuration which produces the inductance, as you are referring to it here.

Q. So, to sum up what you are saying, the coil does have an inductive property, and that inductive property is necessary to the proper function of the Knowles transducer; is that a correct statement of your testimony?—A. Well, the term "necessary" I think is what bothers me, because the inductance of the coil, I can't consider to be necessary. However, as a function of other things which are necessary, it is there. The fact that we have wire in the device, and the wire is coiled and it is used as a transduction between changing magnetic force and electrical output, in this particular case the inductance is there.

I, I hesitate to say it's necessary. It is there, and you can't get rid of it without destroying the other physical properties, electronic properties. [R. 65–68.]

* * * * * * *

Q. How does that definition [inductance], or how does that process described in the definition, differ from the function of the coil in the transducer which you designed?—A. The coil in the transducer, when used as a receiver, induces a magnetic field in the armature; when a current is passed through the coil of the receiver, the current induces a magnetic field in the armature which moves, causes the armature to move, which causes the diaphragm to move, which causes an acoustical output.

In the case of a microphone, the diaphragm causes an armature to move, which disturbs a magnetic field. This magnetic field induces a voltage in the coil, producing an output.

Q. The voltage is then induced in the coil?—A. The voltage is induced in the coil by the motion of the magnetic field.

Q. And you say this is different than electromagnetic induction?—A. That is different from the McGraw-Hill definition of magnetic induction.

Q. In what way?—A. There was no current creating the magnetic field. [R. 89–90.]

* * * * * * *

Q. Referring to your testimony concerning the coils, Mr. Apel: As an electrical engineer, can you state whether or not these coils have the property of inductance, as used in the Knowles transducers?—A. There's no getting away from that, the answer to your question is yes—but I would point out that even a straight piece of wire has inductance.

Q. Would you explain why it is that the coils have inductance, as used in the Knowles application?—A. Why?

Q. Why? Would you explain it in electrical terms.—A. Any conductor has inductance.

coils in miniature magnetic transducers strongly supports that the coils do function to assist in the conversion of energy by inductance.

Q. I am referring specifically to the coils themselves.

You can explain in fairly simple electrical terms the nature of this inductance: what it means; how it comes about; and how it relates to the rest of the circuit in the transducer.

A. Well, inductance is a physical property, like resistance to a resistor, and such things as this. The utility of inductance in a circuit, in an electronic circuit, can be used to do such things as tune a radio—you can match it up with a capacitor. But, in our particular unit, we do not use the inductance, per se.

Q. First of all, I was asking you not what use you made of the inductance at this point, but I was asking you to explain, number one, what you mean by inductance in this sense; and, number two, how that inductance comes about—in very simple electrical terms; in terms of the structure configuration of the components of the transducer.—A. You are looking for a definition of the property of inductance.

Q. And an application of that definition to the transducer which is at issue here.—A. I don't know of the—well, let's answer the questions one at a time.

Inductance is that property of electricity of a coil of wire, or of a conductor, in which energy is stored in a magnetic field. Now, we do not use specifically the property of inductance in our transducers. Now, we use the process of induction in our transducers, but not inductance.

Q. Would you explain how the transducer utilizes the function of induction?—A. Well, in the case of a receiver, what we do with the coil is pass a current through it which causes a magnetic flux to be built up in the assembly. In the case of a microphone, it is a passive device with the magnetic field already existing and deflection of a portion of the magnetic field causing variations in the magnetic flux lines which generate a voltage in the coil.

Q. Would the process you have just described be describable as the property of an electric circuit or of two neighboring circuits whereby an electromotive force is induced by the process of electromagnetic induction in one of the circuits by a change of current in either of them?—

Isn't that what you exactly described in answer to my last question?—A. Not really. What you have ahold of there is, I would have to sit down and study it carefully but you have two terms mixed up: you have "inductance" and "mutual inductance." When you talk about two coils, or neighboring inductance, you are talking about the mutual inductance between them, in which a voltage is generated in the second one because of the flow of current in the first one.

Now, we do not have two coils; we have a single coil in our unit. So, I'd say that definition does not apply.

Q. Well, do you have two neighboring electrical circuits?—A. No.

Q. There's only one electrical circuit?—A. That's right.

Q. Can the relationship of the coil and the armature in the Knowles transducer be regarded as two electrical circuits?—A. Not really. One is an electrical circuit; the other is a mgnetic circuit.

The coil is—because of the passage of current through the coil, you are inducing a magnetic field in a magnetic structure, and yet you actually take pains to minimize the flow of current, electrical current, through that other circuit.

Q. Could the Knowles transducer, the BA2502, function without the property of inductance which you stated that the coil possesses?—A. In that it's physically impossible to make a coil without the property of inductance, the answer is no.

See, inductance is something that comes along as an extra thing; we don't want it.

Q. Would it be possible to use that same coil that I am referring to, Plaintiffs' Exhibits 2, 3, and 4, in another use, or in another electrical article, in which the character of the property of inductance would be both necessary and desirable to the function of that article?—A. Yes, it would, but this would be a bastardization, and you would be paying a price premium.

Q. What do you mean by "a bastardization"?—A. Because you can get an inductor with the inductance of this unit much more readily and more cheaply on a mass produced basis.

Q. In other words, are you saying purely because of the physical, the rigid physical specifications to which these things were designed, it would not be necessary; that that would be wasteful?—A. Very definitely. You could take a piece of wire and wrap

The classification of the coils as inductors is presumed to include each and every fact necessary to support the classification, *E. I. du Pont de Nemours & Co.* v. *United States*, 27 CCPA 146, 149, C.A.D. 75 (1939), and the explanation of the function of the coils appears to involve electromagnetic induction which, as discussed in the *McGraw-Hill Encyclopedia of Science and Technology*, Vol. 7, at 69, is:

> The production of an electromotive force either by motion of a conductor through a magnetic field in such a manner as to cut across the magnetic flux or by a change in the magnetic flux that threads a conductor.

The customs classification is further supported by the opinion of defendant's witness,[18] who testified that the coils are inductors and explained in fuller detail than did plaintiffs' witnesses the manner in which the coils function as inductors in miniature magnetic transducers to produce an electromotive force.

Plaintiffs further contend that if the coils are considered, *arguendo*, inductors, they are not the type of inductors contemplated by classifying item 682.60. As plaintiffs read the item and the witnesses when asked agreed, the articles specified therein, namely, generators, motors, motor-generators, converters, transformers, rectifiers and rectifying apparatus, connote power generating and power distribution equipment. The point plaintiffs make of such analysis is that the imported coils do not have the power handling capabilities of the other articles in item 682.60 and consequently item 682.60 should not be read to include coils

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it around a wooden pencil and get the inductance that you are looking for in our coil.

Q. In any event, you say that these articles could be used in other applications, though it might be wasteful, and that in those applications they would have the function of inductors.—A. Oh, yes. No question about it—but it would be a very strange use.

Q. Well, would you agree then that articles of the same general class and kind and structure, but not designed to the rigid specifications of size necessary for hearing aids, could be used in applications to provide inductance and to, in fact, serve as inductors?—A. You sort of lost me there. If you are saying that if you make a coil and sell it as an inductor, you are right, yes.

Is that what you said? I—I got lost.

Q. Well, I asked if articles of the same general class or kind as Plaintiffs' Exhibit 4 could be used as inductors?—A. Oh, very definitely. No question about it.

Q. And if they were not designed to the same rigid hearing aid specifications, then that would not be a wasteful application, would it?—A. No.

Q. The waste involved would be in using this particular one, because it happens to be of a particular dimension.—A. That's right.

Q. For hearing aids.—A. And this is really—this is beside the point, but this is where our cost is, in building it a certain way.

Q. So the only thing that makes this unique is that it is designed to be squeezed into a hearing aid?—A. Into a transducer.

Q. Excuse me. Into a transducer.—A. Yes. And it's designed as part of a mechanical design in a transducer assembly. [R. 109–116.]

[18] Ronald W. Keipper, graduate engineer, and vice-president of Wabash Magnetics, Inc., Wabash, Indiana, which he testified is the largest independent manufacturer in the United States of electrical components, including transformers, chokes, filters, and coils.

or inductors designed to handle only low voltage current, citing in support, *United States* v. *General Electric Co.*, 58 CCPA 152, C.A.D. 1021, 441 F.2d 1186 (1971), and *Midland International Corporation* v. *United States*, 62 Cust. Ct. 164, C.D. 3715, 295 F. Supp. 1101 (1969). Those cases might help plaintiffs if the history and logic of the classifying provision, as it did in those cases, supported plaintiffs' attempt to distinguish between high and low power electrical goods. But electrical power connotes energy whether it be high power energy or low power energy. TSUS item 682.60 imposes no limitation on the amount of energy involved in the application of the article specified and that, itself, is enough to foreclose plaintiffs' argument that it does. *United States* v. *Ampex Corp. et al.*, 59 CCPA 134, C.A.D. 1054 (1972).[19] If there is a common denominator that exemplifies the articles specified in item 682.60, it is that they are all articles that have to do with the conversion of energy.[20]

Plaintiffs having failed to overcome the presumption attaching to the classification of the imported merchandise as microphones and inductors, the claim for classification under the item 688.40 basket provision for electrical articles and electrical parts of articles, not specially provided for, need not be considered.

Protest 69/1961 is sustained with respect to the BB–2511 receivers and overruled with respect to the BA–2502 microphones, and protest 70/45630 (coils BJ–50, BC–55, and BC–54) is overruled.

Judgment will be entered accordingly.

(C.D. 4484)

KURT S. ADLER, INC. *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Strike Complaint

Court No. 69/40288

Port of New York

[Dismissed.]

(Dated November 20, 1973)

Serko & Sklaroff for the plaintiff and Parksmith Corp.

Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint filed in this action, which is captioned "PARKSMITH CORP., v. UNITED

[19] See also, *op. cit.* n. 9 re Brussels Nomenclature heading 85.01.

[20] See, *Summaries of Trade and Tariff Information* (1969), Schedule 6, Vol. 10, at 129–131.

STATES, Defendant".[1] The basis of defendant's motion is that Parksmith Corp. is not the plaintiff in this action, and hence was not authorized to file the complaint pursuant to rule 4.4. No opposition or other response to the motion has been filed on behalf of either Parksmith Corp. or Kurt S. Adler, Inc., importer of record who filed this protest.

The court's file reveals that on February 2, 1973 defendant filed a motion to dismiss the instant complaint on the very same ground as is now asserted in its present motion to strike the complaint. The prior motion was among approximately 200 motions to dismiss various complaints and actions which were denied in a single memorandum and order by Chief Judge Boe, dated February 27, 1973. *Bendix Mouldings, Inc., et al.* v. *United States*, 70 Cust. Ct. 343, C.R.D. 73–6 (1973).[2] However, Chief Judge Boe also entered the following order: "[P]laintiffs shall have a period of 10 days from and after the entry of this order to correct, by amendment, any omissions in their complaints referred to in defendant's motions to dismiss [viz., proper party-plaintiff]". Insofar as striking or dismissing the complaint for failure to show the proper party-plaintiff, the order of February 27, 1973 is the law of the case. Cf. *Delaware Watch Co., Inc.* v. *United States*, 64 Cust. Ct. 659, R.D. 11698, 311 F.Supp. 1320 (1970).

More than eight months have elapsed from the entry of the prior order on February 27, 1973, and plaintiff has failed to file an amended complaint. No extension of time has been requested by plaintiff to file an amended complaint and, as noted above, defendant's present motion is unopposed. Under all the circumstances herein, I deem it appropriate *sua sponte* to treat defendant's motion to strike the complaint as one to dismiss the action for failure to comply with the court's order of February 27, 1973 and for lack of prosecution pursuant to rules 8.3(b)(3) and 8.3(b)(4). Such motion is granted, and the action is hereby dismissed.

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[1] Defendant's motion papers are similarly captioned.

[2] Court No. 69/40288 is listed on "Schedule G" which covers "[m]otions to dismiss the complaints made with regard to cases due to be removed by October 31, 1972, in which complaints have been filed in the names of plaintiffs which the Government alleges are not the proper party plaintiffs. * * *".

(C.D. 4485)

NEW YORK MERCHANDISE CO., INC. *v.* UNITED STATES

Wood products (salad bowls)

Court No. 70/54672

Port of Portland, Oreg.

[Judgment for plaintiff.]

(Decided November 21, 1973)

Stein & Shostak (*Leonard M. Fertman* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Andrew P. Vance*, Chief, Customs Section), for the defendant.

RICHARDSON, Judge: The merchandise at bar, consisting of wood salad bowls, was classified in liquidation under item 203.30, TSUS, as other compression-modified or densified wood, whether or not impregnated with synthetic resin, and articles of such wood, at the duty rate of 13.9 cents per pound plus 11 *per centum ad valorem* as modified in T.D. 68–9. It is claimed by the plaintiff-importer that the merchandise should be classified under item 206.97, TSUS, as other household utensils and parts thereof, not specially provided for, of wood other than mahogany, at the duty rate of 11.5 *per centum ad valorem* as modified in T.D. 68–9.

In its complaint plaintiff alleges, among other things, that the subject merchandise consists of salad bowls of wood other than mahogany which are not of compression-modified or densified wood and are not specially provided for in the tariff schedules, and that said merchandise is similar in all material respects to the merchandise the subject of Treasury Decision 71–179(14), Bureau of Customs letter dated June 15, 1971, 481.39, and further, requests that judgment issue directing the district director to reliquidate the involved entry under item 206.97, TSUS.

In Treasury Decision 71–179(14) cited in the complaint the Bureau of Customs ruled, among other things, that salad bowls consisting of the mixing bowl and individual bowls (12 inches and 6 inches in diameter, respectively) composed of woven wood-veneers bound together with synthetic plastic materials and formed by heat and pressure are classifiable under the provision for household utensils not specially provided for, of wood, according to species of wood, in item 206.95 or 206.97, TSUS. In the instant case the defendant admits that

the merchandise at bar is similar in all material respects to the merchandise the subject of the said Treasury Decision 71–179(14), and that the subject merchandise consists of salad bowls of wood other than mahogany which are not of compression-modified or densified wood and are not specially provided for in the tariff schedules. Consequently, since the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of the subject merchandise under item 206.97, TSUS, at the duty rate of 11.5 *per centum ad valorem* is sustained. Judgment will be entered herein accordingly.

Decisions of the United States Customs Court

Custom Rules Decisions

(C.R.D. 73–26)

F. W. WOOLWORTH CO. *v.* UNITED STATES

On Plaintiff's Motion for Suspension

Court No. 71–9–01163

[Motion granted in part.]

(Dated November 19, 1973)

Sharretts, Paley, Carter & Blauvelt (*Richard L. Furman* and *Patrick D. Gill* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

MALETZ, Judge: This is a motion pursuant to rule 14.7(a) seeking suspension of the present action pending final determination of *Mego Corp.* v. *United States*, Court No. 68/4325, which was designated a test case by order of the court dated August 17, 1972. Defendant objects to suspension on the ground that the present action involves not only articles similar to those involved in the test case, but also articles of an entirely different type.

It is to be noted that *Mego*—the test case—concerns the proper dutiable status of articles invoiced as vinyl stuffed baseball gloves. The gloves were classified by the government under item 737.90 of the tariff schedules as toys. Plaintiff insists that the gloves are not toys and claims alternatively that they are properly classifiable (1) under item 734.55 of the tariff schedules as baseball equipment; or (2) under item 735.05 as gloves specially designed for use in sports; or (3) under item 735.20 as sport or athletic equipment.

The present action involves the proper dutiable status of articles invoiced as junior baseball sets (i.e. gloves); target game sets; and acrobat snakes. All these articles were classified by the government under item 737.90 as toys. As in *Mego*, plaintiff here insists that the three types of imported articles are not toys. It claims alternatively that the gloves are properly classifiable under item 734.54 as baseball gloves or under item 734.56 as other baseball equipment.[1] It further claims that the target game sets are properly classifiable under item 735.20 as game equipment, and that the acrobat snakes are properly classifiable under item 737.65 as practical joke articles.

According to plaintiff's motion for suspension, the issue of fact or law in the present case, which is the same as the issue of fact or law in the test case, is "whether [the] imported merchandise is toys or *baseball* equipment specially designed for use in sports." [Emphasis added.]

With these considerations in mind, we now proceed to determine whether the *entire* present action—which involves the dutiable status of baseball gloves, target game sets and acrobat snakes—is, pursuant to rule 14.7(a), suspensible under *Mego*, which involves only the dutiable status of baseball gloves.

Rule 14.7(a) provides in part that:

> * * * An action may be suspended pending the final determination of another action (hereinafter referred to as a test case) if it involves *an issue of fact or a question of law which is the same as the issue of fact or question of law involved in such test case.* * * * [Emphasis added.]

Against this background, plaintiff argues that only "*an*" issue of fact or law need be the same in the case for which suspension is sought as in the test case. Continuing, plaintiff contends that there is no language in rule 14.7(a) requiring that the case for which suspension is sought possess one, and only one, issue or that it possess no issue other than that involved in the test case. For, in plaintiff's view, the rule requires only that the case sought to be suspended contain *an* issue of fact or question of law which is the same as the issue of fact or question of law in the test case.

Defendant concedes that if the present action involved only the dutiable status of the baseball gloves, suspension would be appropriate. It adds, however, that the present action involves two other articles, i.e. target game sets and acrobat snakes, and that absent abandonment or severance of the claims relating to target game sets and acrobat snakes, the present action is not suitable for suspension. In short, defendant's

[1] Item 734.55 covering baseball equipment was deleted effective January 1, 1968, by Presidential Proclamation 3822, 32 F.R. 19002, and items 734.54 and 734.56 were added in lieu thereof.

position is that rule 14.7(a) should not be construed to allow suspension of a multiple type of merchandise action under a test case involving a single type of merchandise.

For the following reasons, the court agrees with defendant's position. In the first place, "[t]he purpose of the suspension procedure in this court is to facilitate the disposition of actions, eliminating the necessity of trying the same issue over and over again, and dispensing with the filing of complaints and answers in actions which in all likelihood will never be tried." *H. H. Elder & Co.* v. *United States*, 69 Cust. Ct. 344, 345, C.R.D. 72–28 (1972). In short, a suspension under rule 14.7(a) should aid in the conclusive determination of a case sought to be suspended thereunder. And on this aspect, it is hardly likely that a final decision in the test case as to the proper classification of baseball gloves would resolve the two additional claims relating to the proper classification of target game sets or acrobat snakes.

Thus, if this court were to allow suspension of the *entire* action under *Mego*, the result would be to allow a continuance, for no good reason, of the issues of fact and law that are involved in the target game set and acrobat snake disputes. Indeed, these issues might not be litigated until years after the importation of the merchandise and the commencement of the action. Such a result, it is clear, would be directly contrary to the spirit of the rules of this court which under rule 1.1(b) "shall be so construed as to promote the just, speedy, and inexpensive determination of every action." [2]

In all these circumstances, the court deems it appropriate, pursuant to rule 10.3(c), to require a severance as between the baseball glove issue and the target game set and acrobat snake issues.[3] Such a severance would accomplish two purposes: first, it would enable the baseball glove issue to be suspended under *Mego;* second, it would preclude suspension of the target game set and acrobat snake issues.

It is therefore ORDERED:

1. That the baseball glove issue be severed from the target game set and acrobat snake issues:

2. That the baseball glove issue be suspended under *Mego Corp.* v. *United States*, Court No. 68/4325;

3. That suspension under *Mego* of the target game set and acrobat snake issues be denied.

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[2] Of course, if the test case involves a threshold issue—such as a jurisdictional question—which might be dispositive, it would be entirely consistent with the purpose of rule 14.7(a) to suspend under that test case other actions involving the same threshold issue, notwithstanding that such actions might present further issues that differ from those in the test case. For in the absence of suspension in that type of situation, the same threshold question would have to be tried over and over again.

[3] Rule 10.3(c) provides that "[t]he court may order a severance and separate proceeding or trial of any claim or issue."

(C.R.D. 73–27)

BERKEY TECHNICAL CORP *v.* UNITED STATES

Memorandum Opinion and Order on Plaintiff's Motion for a More Definite Statement

Court No. 71–6–00284

[Motion denied.]

(Dated November 21, 1973)

Scrko & Sklaroff (*Irving A. Mandel* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

RE, Judge: This motion arises out of litigation in which certain articles, imported by the plaintiff, were classified by the customs officials under item 653.39 of the Tariff Schedules of the United States, as modified, as "other illuminating articles, or parts thereof, of base metal", and were assessed with duty at 19 per centum ad valorem. Pursuant to rule 4.7(d) of the rules of this court, plaintiff has moved for an order to compel the defendant to make more definite and certain a paragraph in its answer.

Rule 4.7(d) provides:

> "**(d) Motion for More Definite Statement:** Any party may move for an order to make any pleading more definite and certain. The motion shall point out the defects complained of and the details desired. * * *"

Plaintiff's request is predicated on the contention that the disputed paragraph of the answer does not comply with rule 4.6(a)(2) of this court.

Rule 4.6(a)(2) provides:

> "**(a) General:** The answer to a complaint shall:
>
> * * * * * * *
>
> (2) if there is a denial of an allegation, contain a concise statement of the defendant's contention as to the facts or law concerning the matter denied; * * *."

The allegation of the complaint, and the answer claimed not to be sufficiently definite, read as follows:

Plaintiff's Complaint:

> "8. Said articles are not illuminating."

Defendant's Answer:

"8. Denied."

In essence, therefore, plaintiff contends that the word "denied", stated in defendant's answer, does not comply with the applicable rule of court; hence, the present motion to compel the defendant to make its answer "more definite and certain". It may be stated, at the outset, that the discretion of the court, in granting or denying a motion to render a pleading "more definite and certain", should be exercised in such a manner as to further the spirit of the rules, to simplify procedure, and to expedite the trial of cases on the merits.[1]

Prior to their adoption, the rules of this court were the subject of extensive study at the various meetings of the Advisory Committee on Rules of the United States Customs Court. It was observed that an answer needed to be only as precise as the complaint. See *Rogers* v. *Scott*, 300 P. 441, 35 N.M. 446 (1931). That is, if the complaint is drafted in general terms, the defendant would be justified in responding by a general denial.

The deliberations of the Advisory Committee meetings leave no doubt that the purpose of the pleadings was to narrow the issue. For example, whenther e are allegations which are admitted, there is no necessity for the plaintiff to offer any proof to sustain theseallegations; however, of plaintiff's allegations are denied, it would be necessary to prove them if plaintiff wished to prevail. The dual function of the defendant's answer, therefore, is to apprise the plaintiff and the court of the allegations in the complaint that are admitted, and hence are not in issue at the trial, and those that are contetsed which will require proof to enable the plaintiff to prevail.

It is well to remember that procedure "exists only for the sake of 'substantive' law." Holland, *Jurisprudence* 355 (12th ed. 1917). In broad terms, pleadings are designed to inform the court of the question before it for decision. Theyar e the written statements made by the porties of their respective grounds of action or defense. The object is to ascertain what are the matters in controversy, and to keep the inquiry within reasonable bounds. See Pollock, *Jurisprudence* 79–80 (1929).

Plaintiff herein has alleged that certain "articles are not illuminating." The defendant, in its answer, with the single word "denied" has controverted that allegation, i.e., it has denied that they "are not illuminating." Surely a more elaborate answer could have been drafted. Verbosity, however, would not have improved upon the clear and positive response that categorically denied plaintiff's allegation. The

[1] See *Fleming* v. *Dierks Lumber & Coal Co.*, 39 F. Supp. 237 (D.C. Ark. 1941), and *Etablissements Neyrpic* v. *Elmer C. Gardner, Inc.*, 175 F. Supp. 355 (D.C. Tex. 1959).

denial was neither equivocal nor ambiguous. See *Zuckerman* v. *Guthner*, 85 P.2d 727, 103 Colo. 276 (1938). It was a direct contradiction of plaintiff's allegation, and was therefore sufficient to raise a triable issue. See *McClave* v. *Gibb*, 31 N.Y.S. 847, 849–850, 11 Misc. 44 (1895).

Traditionally, pleadings have served four major functions: (1) they give notice of the nature of the claim or defense; (2) they state the facts each party believes to exist; (3) they serve to narrow the issues that must be litigated; and (4) they provide a means for the speedy disposition of sham and insubstantial claims and defenses.[2] Thus, the overriding purpose of pleadings in this court is the framing of the issue or issues that need be litigated.

While rule 4.7(d) of the rules of this court is based in part upon rule 12(e) of the Federal Rules of Civil Procedure, it does not contain language which limits its application only to those instances where the pleading complained of is so vague or ambiguous that a proper response cannot be framed. See *Mitsubishi International Corp.* v. *United States*, 71 Cust. Ct. —, —, C.R.D. 73–19 (1973).[3] Nevertheless, rule 4.7(d) ought not to be construed in a manner that would destroy the fundamental distinction between pleading and proof. Nor should it be construed so as to alter the applicable rule as to the burden of proof.

In a customs case, plaintiff has the burden of proof. Indeed, there is a presumption that, the Secretary of the Treasury, or his delegate, has correctly made his determination; and that the burden to prove the contrary rests entirely upon the plaintiff, or the party challenging the determination of the customs officials. See *United States* v. *Enrique C. Lineiro*, 37 CCPA 5, C.A.D. 410 (1949).

Included in the presumption of correctness is the subsidiary presumption that the Secretary of the Treasury, or his delegate, has made all the correct findings of fact necessary to sustain his determination. See *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970); *W. A. Gleeson* v. *United States*, 59 CCPA 17, C.A.D. 998, 432 F.2d 1403 (1970); *Novelty Import Co., Inc.* v. *United States*, 53 CCPA 28, C.A.D. 872 (1966). Furthermore, facts which the court may properly judicially notice need not be alleged, but may be read into the pleadings, even when

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[2] See Wright and Miller, 5 *Federal Practice and Procedure* 59–60 (1969).

[3] Rule 12(e) provides:

> "(e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is *so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading,* he may move for a more definite statement before interposing his responsive pleading. * * *" (Emphasis added.)

In contrast, rule 4.7(d) provides: "Any party may move for an order to make any pleading more definite and certain. The motion shall point out the defects complained of and the details desired. * * *"

there are express allegations to the contrary. See *In re Bowling Green Milling Co.*, 132 F.2d 279 (6th Cir. 1942); *Nichketta* v. *National Tea Co.*, 87 N.E.2d 30, 338 Ill. App. 159 (1949); *Lang* v. *American Motors Corp.*, 254 F. Supp. 892 (D.C. Wisc. 1966).

It is axiomatic that the rule-making power must conform with constitutional and statutory limitations. Consequently, rules of court, unless their validity is to be questioned, must, of necessity, be reconciled with pertinent statutes. Rule 4.7(d), therefore, may not be interpreted so as to permit the plaintiff to shift its burden of proof to the defendant. See 28 U.S.C. § 2635 (1970). In the case at bar, the classification of the merchandise by the appropriate customs officials gave rise to the statutory presumption that it was of the type contemplated by item 653. 39 of the tariff schedules.

In *R. J. Saunders & Co., Inc.* v. *United States*, 67 Cust. Ct. 599, C.R.D. 71–1 (1971), this court had occasion to decide a motion for a more definite statement under circumstances similar to those at bar. The plaintiff in the *Saunders* case claimed that the defendant's answer was inadequate in that it did not contain statements of defendant's contentions regarding law and facts as to each denial of the allegations in the complaint.

In denying the motion, the court stated:

> "In view of the statutory presumption and the subsidiary presumptions flowing therefrom, defendant's answer in the instant case, which denies the allegations of the complaint and states in a separate paragraph, designated as an affirmative defense, its contention (of fact and law) that the decision of the Regional Commissioner at New York is correct is sufficient to cover all the allegations." 67 Cust. Ct. at 601.

It is possible to distinguish the instant case from the *Saunders* case in that no affirmative defense has been pleaded here. Nontheless, the court is of the opinion that, for purposes of the present motion, the assertion of an affirmative defense is unimportant. The statutory presumption of correctness still governs, and plaintiff, in order to prevail, must bear its burden of proof to overcome the presumption.

It cannot be doubted that rule 4.7(d) must be construed and applied in conformity with the applicable statutory presumtpion of correctness. Also, it cannot be construed in such a way as to mandate verbiage, repetition or detail at variance with modern pleading and current federal practice. Codes of civil procedure, and rules promulgated thereunder, are designed to simplify pleading and eradicate the formalism, technicality, and detail characteristic of ancient procedure.

The pleadings have served their functions once they have framed the issue. From that moment, all efforts, of both bench and bar, are to

be devoted to a resolution of the merits of the controversy. Pleadings are designed to advance a case for trial so that the court may decide the issue presented for judicial determination. If a party cannot prepare for trial without the aid of discovery, generous provisions for discovery are found in all modern rules of court.

In the case at bar, plaintiff has alleged that certain articles classified by the customs officials as illuminating articles "are not illuminating." The defedant has "denied" plaintiff's allegations that they are "not illuminating" articles. Having thus framed the issue, a trial ought to follow to determine the merits of the controversy.

For the foregoing reasons, plaintiff's motion is denied.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 26, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/975	Rao, J. November 19, 1973	Rohner Gehrig & Co., Inc., et al.	64/13306, etc.	Par. 904(c) 16 1/4%, 16%, 15 3/4%, 15 1/2% or 15 1/4%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Cotton suede cloth with a water-repellent finish

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/976	Rao, J. November 19, 1973	Suede Velveteen Corduroy Importing Corp.	64/25095, etc.	Par. 904(c) 18%, 16 ¼%, 16%, 15 ¾%, 15 ½% or 15 ¼%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Cotton suede cloth with a water-repellent finish
P73/977	Ford, J. November 19, 1973	Facit, Inc.	60/24060, etc.	Par. 353 or 372 12.5%	Par. 353 or 372 10.5%	U.S. v. Air-Sea Forwarders et al. (C.A.D. 907)	San Francisco Adding or calculating machines
P73/978	Ford, J. November 19, 1973	Paramount Textile Machinery Co.	71-7-00546	Par. 372 20% or 18% (items marked "A" and "B")	Par. 372 11.5% or 10.5% (items marked "A" and "B")	Wilfred Schade & Co., Inc., et al. v. U.S. (C.D. 4331) (items marked "A" and "B")	Norfolk–Newport News Preboarding machines (items marked "A") Parts of preboarding machines (items marked "B")
P73/979	Watson, J. November 19, 1973	Florentine Trading Co.	67/59820, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P73/980	Watson, J. November 19, 1973	Import Associates of America, Inc.	67/4155	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New Orleans Artificial flowers, etc.

P73/981	Watson, J. November 19, 1973	Kaytee Imports, Inc.	68/1547, etc.	Item 748.20 28% (items marked "A", "B" or "C")	Item 774.60 17% (items marked "A" and "C")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)(items marked "A") International Artware Corporation v. U.S. (C.D. 4184) (items marked "B") Joseph Markovits, Inc. v. U.S. (C.D. 4396) (items marked"C")	New York Artificial flowers, etc. (items marked "A" and "C") Mistletoe and holly floral arrangements (items marked "B")
P73/982	Watson, J. November 19, 1973	Marcus Display Industries, Inc., et al.	66/4323, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Boston Artificial flowers, etc.
P73/983	Watson, J. November 19, 1973	Regency Flowers, Inc.	71-5-00126	Item 748.20 23.5%	Item 774.60 11.5%	Joseph Markovits, Inc., v. U.S. (C.D. 4396)	New York Artificial ferns, in c.v. of plastic, produced in one piece
P73/984	Newman, J. November 19, 1973	Degussa, Inc.	69/36879, etc.	Item 531.37 31%	Item 531.37 31%, 27% or 22.5%	Judgment on the pleadings	New York Tubes
P73/985	Newman, J. November 19, 1973	Degussa, Inc.	70/57028 and 70/65593	Item 531.37 31% Item 531.37 27%	Item 531.37 27% Item 531.37 22.5% Protests dismissed as to entries K332134 and K154783	Summary judgment	New York Ceramic products

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/986	Rao, J. November 20, 1973	Rohner Gehrig & Co., Inc., et al.	70/61692, etc.	Par. 904(c) 15¼% or 15½%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Cotton suede cloth with a water-repellent finish
P73/987	Ford, J. November 20, 1973	Airesearch Mfg. Co., A Division of the Garrett Corporation	70/44429	Par. 353 12½%	Par. 370 11%	Railway Express Agency Inc., etc. v. U.S. (C.D. 2598)	Los Angeles Aircraft computers, and parts of computers
P73/988	Ford, J. November 20, 1973	Amerisam Co., Inc., et al.	68/68228, etc.	Item 684.70 13% or 12%	Item 685.25 11% or 10%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	Chicago Earphones
P73/989	Watson, J. November 20, 1973	Amco Customs Brokerage Co. et al.	69/11460, etc.	Item 791.15 20% or 11%	Item 791.75 12% or 9.5%	Abercrombie & Fitch Co. v. U.S. (C.D. 3093)	Philadelphia Sheepskin coats or jackets not of reptile leather
P73/990	Watson, J. November 20,	Colorado Trading Co. et al.	67/82537, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P73/991	Watson, J. November 20, 1973	Copy Cats Trading Co.	67/47145, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial flowers, etc.

P73/992	Watson, J. November 20, 1973	North American Philips Co., Inc.	62/602	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	San Francisco Shaver cases
P73/993	Watson, J. November 20, 1973	North American Philips Co., Inc.	62/1307, etc.	Par. 397 19%	Par. 353 13¾%	R. J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	Chicago Shaver cases
P73/994	Watson, J. November 20, 1973	Regency Flowers, Inc.	69/26128 ect.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zuno'd Training Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.
P73/995	Watson, J. November 20, 1973	Ross Products, Inc.	67/39128	Item 748.20 26.5%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial ferns, fruits, leaves, etc.
P73/996	Newman, J. November 20, 1973	Cellulose Sales Co.	73-2-00365, etc.	Item 493.18 11¢ per lb. Item 445.50 14% plus 1.5¢ per lb.	Item 494.60 3%	Agreed statement of facts	New York A substance used solely for the purpose of adhering wallpaper or wall coverings to walls
P73/997	Newman, J. November 20, 1973	Everbest Jewelry Corp.	65/12871, etc.	Item 653.40 19%	Liquidations void, protests premature and dismissed, entry returned to regional commissioner for appropriate administrative action	Agreed statement of facts	New York Two separate tariff entities: bicycle front lamps of metal and bicycle rear directional signals

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/998	Newman, J. November 20, 1973	Fanon Electronic Industries, Inc.	68/65675, etc.	Item 684.62 15.5% or 14%	Item 685.25 11% or 10%	Agreed statement of facts	New York Intercoms, models, BL-1642, BL-1643 and 3404, and printed circuit boards, models, FIW and FIWI
P73/999	Newman, J. November 20, 1973	Morris Friedman & Co.	70/44368, etc.	Item 737.90 24%	Item 534.97 18.5%	Agreed statement of facts	Philadelphia Household articles of ceramic ware, not chiefly used for amusement of children or adults
P73/1000	Newman, J. November 20, 1973	United China & Glass Co.	65/8385, etc.	Par. 212 60% or 45% and 10¢ per doz. pcs.	Par. 212 45%	U.S. v. The Baltimore & Ohio R.R. Co. a/c United China & Glass Company (C.A.D. 719) W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	New Orleans Decorated porcelain cups and saucers
P73/1001	Newman, J. November 20, 1973	Julius Wile Sons & Co., Inc.	71-4-00034	Item 546.52 50%	Item 545.27 0.35¢ per lb.	Agreed statement of facts	New York Containers chiefly used for packing, transporting or marketing of merchandise holding over 1 pint

P73/1002	Boe, C.J. November 23, 1973	Fraser's, Inc., et al.	67/32626(A), etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P73/1003	Richardson, J. November 23, 1973	General Instrument Corporation	69/11023, etc.	Item 687.60 12.5% or 11% without allowance under item 807.00 for cost or value of product of U.S., gold wire	Item 687.70 12.5% or 11% Cost or value of gold wire deductible from full value of imported transistors pursuant to item 807.00	General Instrument Corporation v. U.S. (C.A.D. 1062)	New York American goods returned (gold wire incorporated into transistors)
P73/1004	Watson, J. November 23, 1973	George E. Bush & Co., Inc.	66/77728	Item 652.35 or 657.20 19% or 17%	Item 652.18 12.5%	Judgment on the pleadings Kelco, Incorporated, et al. v. U.S. (C.D. 3031)	Portland (Oreg.) Conveyor chain chiefly used for the transmission of power

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1005	Maletz, J. November 23, 1973	Carson M. Simon et al	58/7865, etc.	Par. 1527(a)(2) 55%	Par. 412 16⅔%	Morris Friedman et al. v. U.S. (C.D. 3283)	Philadelphia Articles in c.v. of wood
P73/1006	Newman, J. November 23, 1973	Household Mfg. Co.	66/69765	Item 651.75 Various ad valorem equivalents set out in schedule A, attached to decision and judgment, in column headed "Assessed Rate"	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, or similar merchandise
P73/1007	Newman, J. November 23, 1973	New York Merchandise Co., Inc.	64/20423, etc.	Par. 212 45% and 10¢ per doz. pcs.	Par. 212 45%	U.S. v. The Baltimore & Ohio, R.R. Co. a/c United China & Glass Company (C.A.D. 719) W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	San Diego Decorated porcelain cups and saucers

P73/1008	Newman, J. November 23, 1973	Propper Mfg. Co., Inc.	70/33835	Item 709.27 28.5%	Item 709.06 15%	Judgment on the pleadings	New York Macintosh Laryngoscopes (including blades, handle and bulbs)
P73/1009	Newman, J. November 23, 1973	Z & T Importing Co., Inc.	64/10272, etc.	Par. 1531 or 1531/1559(a) 20%	Par. 353 12.5%	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	Los Angeles Cases imported with radios

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/336	Ford, J. November 19, 1973	C. J. Tower & Sons of Buffalo, Inc.	R69/10461, etc.	Constructed value: In Canadian dollars is invoice value (stated in U.S. dollars), plus currency conversion factor stated in appraisement, plus 30.4% for general expenses and profit, including value of U.S. components if any	Not stated	C. J. Tower & Sons of Niagara, Inc. v. U.S. (R.D. 11577)	Buffalo Repair parts for can making and can closing machines
R73/337	Newman, J. November 19, 1973	Marubeni-Iida (America), Inc.	R66/14971	Constructed value	$3.11 per radio; $0.10 per battery; $0.10 per earphone, all net packed	Agreed statement of facts	Los Angeles Radios imported together with earphones and batteries

R73/338	Newman, J. November 19, 1973	Nikko Boeki Int'l., Inc.	73-2-00342	Constructed value	Radios: $4.88688 each, net packed Batteries: $0.08448 each, net packed Earphones: $0.06864 each, net packed	Agreed statement of facts	Seattle Radios together with earphones and batteries
R73/339	Watson, J. November 20, 1973	Exbrook, Inc., et al.	R68/9689, etc.	Export value: Invoiced unit prices plus a prorated portion of the items marked "X"	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R73/340	Newman, J. November 20, 1973	Midland International Corp.	R68/15923	Constructed value	Radios: $5.145 each, net packed Earphones: $0.05 each, net packed Batteries: $0.055 each, net packed	Agreed statement of facts	Los Angeles Twelve transistor radios together with earphones and batteries
R73/341	Re, J. November 20, 1973	United States Plywood Corp.	R59/15867, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/342	Boe, C.J. November 23, 1973	Railway Express Agency, Inc.	R60/625, etc.	Constructed value	Various values as indicated in decision and judgment for entries enumerated on schedules A, B and C	Agreed statement of facts	San Francisco Radios imported alone and radios imported together with earphones and batteries
R73/343	Boe, C.J. November 23, 1973	Westinghouse Electric Corp.	R68/18140, etc.	Constructed value	Various values as indicated in decision and judgment for entries enumerated on schedules A through E	Agreed statement of facts	New York Radios imported together with earphones and batteries, and combination articles consisting of a radio with one or more of the following: flashlight, clock movement, cigarette lighter, pens, earphones and batteries
R73/344	Newman, J. November 23, 1973	Transamerican Import & Export, Inc.	R61/15461	Export value	$7.78 per radio set, net, packed, exclusive of earphones and earphone cases	Agreed statement of facts	Chicago Radios
R73/345	Re, J. November 23, 1973	B. A. McKenzie & Co., Inc., et al.	281640-A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *December 6, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337-L-68]

PIEZOELECTRIC CERAMIC 10.7 MHz ELECTRIC WAVE FILTERS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on July 20, 1973, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by the Vernitron Corporation of Bedford, Ohio, alleging unfair methods of competition and unfair acts in the importation and sale of piezoelectric ceramic electric wave filters which are embraced within claims of U.S. Patents Nos. 3,222,622 and 3,676,724, owned by the complainant. International Importers, 2242 South Western Avenue, Chicago, Illinois, has been named as an importer of the subject electric wave filters.

In accordance with the provisions of section 203.3 of its Rules of Practice and Procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and, if so, whether the Commission should recommend to the President the issuance of a temporary order of exclusion from entry under section 337 (f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than January 4, 1974. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued November 26, 1973.

[337–L–50]

COMBINATION MEASURING TOOLS

Notice of dismissal of preliminary inquiry

On the basis of the submissions made to the Commission by interested parties, the Tariff Commission on November 20, 1973, dismissed preliminary inquiry 337–L–50 without a determination on its merits; notice of the receipt of the complaint was published in the *Federal Register* of June 1, 1972 (37 F.R.11003).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued November 28, 1973.

[TEA–W–218]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Elmira Heights Plant, Elmira, New York, of the Motor Components Division of the Bendix Corp., Southfield, Michigan, the United States Tariff Commission, on November 27, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with one-speed bicycle hubs incorporating coaster brakes (of the type provided for in item 732.36 of the Tariff Schedules of the United States) produced by

said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register*.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued November 28, 1973.

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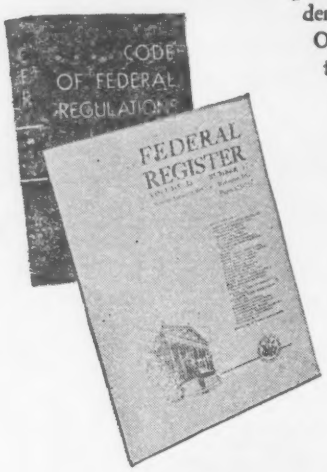

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